



Office of the Attorney General
State of Texas

DAN MORALES

ATTORNEY GENERAL

March 18, 1992

Mr. Jeff Hankins
Texas Department of Insurance
323 Guadalupe
MC 110-IC
Austin, Texas 78701

OR92-108

Dear Mr. Hankins:

The Department of Insurance received a written request for information pertaining to parties to the reorganization of a title company regulated by the department. Specifically, the requestor asks for copies of complaints filed against the parties and current and periodic financial data compiled by the department on each of the parties. You ask whether this information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12582.

You claim that the requested information is excepted by sections 3(a)(1), 3(a)(10), and 3(a)(12) of the Open Records Act. Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You state that some of the complaints contain copies of documents prepared in connection with the transactions forming the basis of the complaints, such as escrow agreements and closing statements, which reveal information regarding personal finances, business interests, and private financial transactions. You contend that this information is protected by common law privacy.

Common law privacy protects information which (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate public interest. *Industrial Found. of the South v. Texas Indust. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). Financial information relating to an individual satisfies the first part of the common law privacy standard. Open Records Decision No. 373 (1983). Whether personal financial information is of

legitimate public interest must ordinarily be determined on a case-by-case basis. Open Records Decision No. 523 (1990).

Assuming the sample letter of complaint submitted for our review is typical, we do not believe such letters communicate highly intimate or embarrassing information for purposes of common law privacy. The sample letter, for example, merely describes the substance of the transaction forming the basis of the complaint but does not otherwise communicate detailed personal financial information. In contrast, we believe the records supplied with the complaint documenting the transaction do constitute the kind of personal financial information which this office has previously regarded as protected by common law privacy. *See* Open Records Decision Nos. 545 (1990); 373 (1983). You must therefore withhold supporting documents containing similar personal financial information from public disclosure.¹

You also claim section 3(a)(1) in conjunction with article 9.39 of the Insurance Code, which provides in pertinent part that reports and analyses submitted to the department by a title insurance company² as part of a required annual audit,

shall, at the election of the Commissioner [of the Texas Department of Insurance], be classified as confidential and privileged after having been filed with the [State] Board [of Insurance].

Ins. Code art. 9.39. You state that the requested periodic financial data consists of audit reports submitted pursuant to section 9.39, and advise that the Commissioner

¹You also assert section 3(a)(10) with respect to this information. This exception protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." We interpret your claim to apply only to the documentation accompanying the complaints, and not to the letter of complaint itself. Because we have found the supporting documents submitted to us to be excepted by common law privacy under section 3(a)(1), we need not address your section 3(a)(10) claim. Also, since the supporting documentation is excepted from public disclosure by a right of privacy, an individual complaint may not be withheld from the person submitting it to the department. *See* V.T.C.S. art. 6252-17, § 3B. Thus if the requestor is the authorized representative of an individual submitting a complaint subject to this request, that complaint must be provided to the requestor. *Id.*

²Open Records Decision No. 501 (1988) determined that audit reports submitted by agents of a title insurance company are also encompassed within this provision of article 9.39

has elected to designate the requested reports as confidential. In light of the Commissioner's determination, we conclude that the information may not be publicly disclosed. *See* Open Records Decision No. 501 (1988)

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-108.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Steve Aragón", with a stylized flourish at the end.

Steve Aragón
Assistant Attorney General
Opinion Committee

SA/nhb

Ref.: ID# 12582; 12276

cc: Mr. Charles Giesen
11302 Ericston Drive
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